



**Forest
Practices
Board**

**Follow-up Review of Government's
Performance in Addressing New
Skeena Forest Products Obligations on
Nisga'a Lands**

Special Report

FPB/SR/37

November 2009

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Board Commentary

The *Nisga'a Final Agreement* (the Agreement), which came into effect on May 11, 2000, is a treaty between the Nisga'a Lisims government, the Canadian government, and the government of British Columbia. Part of the Agreement required the Forest Practices Board (the Board) to perform annual audits of compliance with, and enforcement of, forest practices legislation and forestry-related requirements of the Agreement during a five-year transition period, which ended on May 10, 2005.

The last of the Board's five annual audit reports addressing compliance during the transition period was released in May 2007. In its final audit report, the Board concluded that all licensees, apart from New Skeena Forest Products, were compliant with the applicable legislation. New Skeena, which remained under bankruptcy protection through the audit period, did not fulfill its obligations.

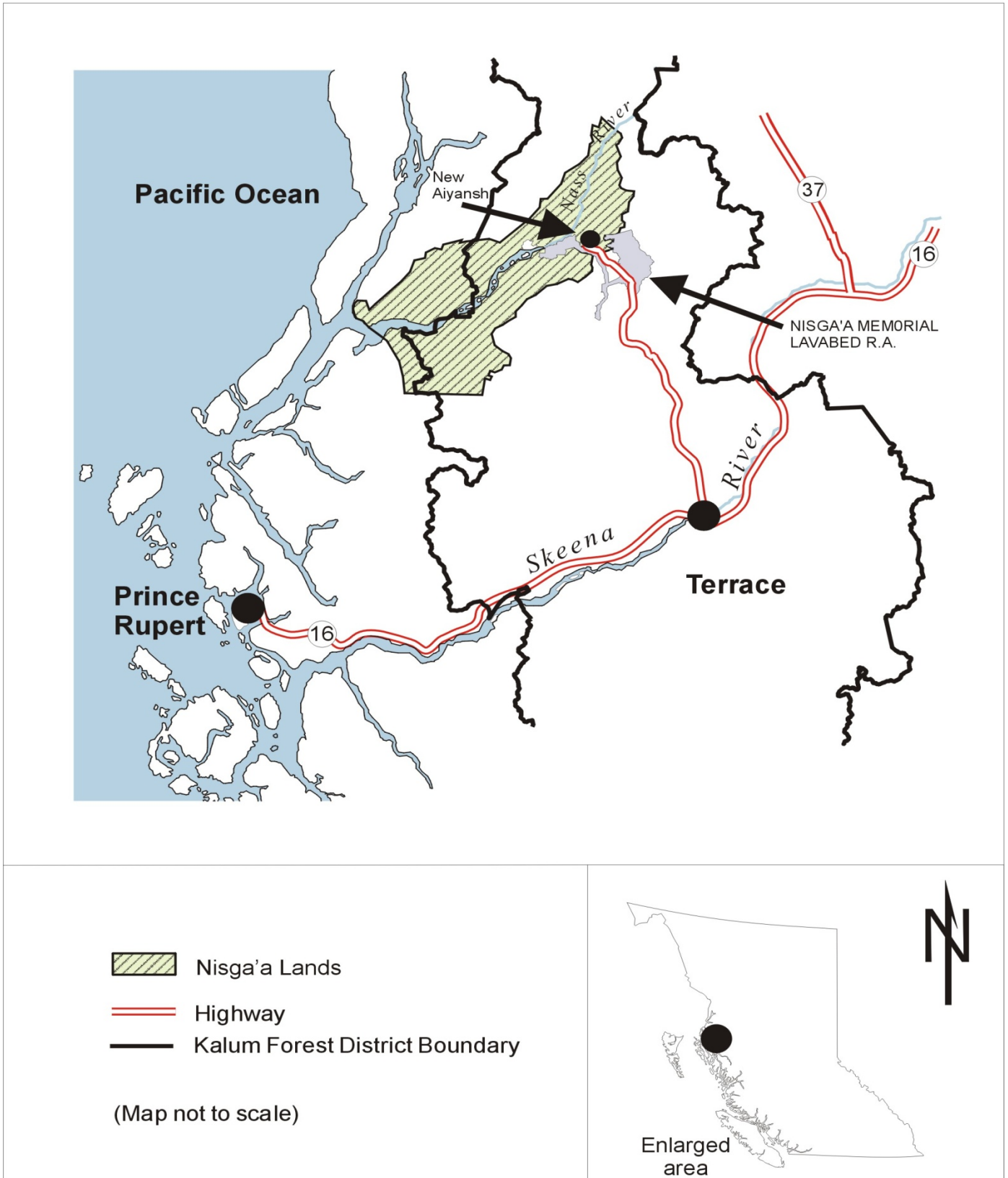
When the Board published its 2007 report, the Ministry of Forests and Range (MFR) had begun its own actions to address the outstanding obligations of New Skeena, but it was too early to tell how effective these actions would be. As a result, a commitment was made by the Board to review government's performance in addressing New Skeena's obligations. This follow-up report fulfils that commitment.

Overall, the Board found that MFR worked cooperatively with the Nisga'a Lisims government and took effective action in addressing the outstanding New Skeena obligations identified in the Board's May 2007 audit report.

However, while dealing with New Skeena's outstanding reforestation obligations, the MFR provided seedlings for planting that did not comply with the criteria for elevation specified by the chief forester's standards for seed transfer. Since seedlings planted outside of their intended elevation range are at increased risk of not performing optimally over time, MFR has informed the Board that it plans to replant the affected portions of the cutblocks with appropriate seedlings.

The Board commends the BC government, and in particular MFR, for their commitment to, and cooperation with, the Nisga'a Nation in identifying and addressing New Skeena's obligations. It is our hope that the spirit of cooperation between these two governments will persist as the province continues to address New Skeena's remaining silviculture obligations on Nisga'a Lands, to the satisfaction of all parties.

Nisga'a Lands

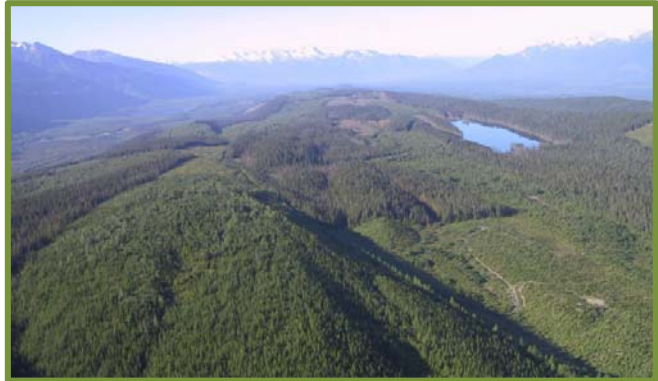


Auditor of Record's Follow-up Report

Background

Chapter 5, section 55 of the *Nisga'a Final Agreement* (the Agreement) required the Forest Practices Board (the Board) to perform compliance audits of forest agreements and licences on Nisga'a lands in each year of a defined five-year transition period ending on May 10, 2005.

The last of the Board's five audit reports addressing compliance during the transition period was released in May 2007. The final report identified pervasive non-compliance on the licences of New Skeena Forest Products (New Skeena), which did not undertake activities to address its accumulated harvest, silviculture, bridge inspection, road maintenance or road deactivation obligations during the final year of the transition period.



Overview of Nisga'a Lands.

At the time of the 2007 report, MFR had begun its own actions to address the obligations of New Skeena, but it was too early to tell how effective these actions would be. As a result, a commitment was made by the Board to review government's performance in addressing New Skeena's obligations. This follow-up report fulfils that commitment.

Description of the Nisga'a Lands

Under the Agreement, the Nisga'a Nation was formally granted rights to the Nisga'a lands, an area of approximately 200,000 hectares in and around the Nass Valley, 100 kilometres northwest of Terrace.

Scope of Follow-up Report

This follow-up report is focused specifically on the extent to which the follow-up actions undertaken by MFR are addressing New Skeena's outstanding compliance obligations under the *Forest Practices Code of British Columbia Act* (the Code), and related regulations, on Nisga'a land.

Review Approach and Findings

Review work consisted of field observations undertaken from September 3 to 5, 2008, record review (including survey results, planting records and contracts) and interviews. The results of the review are summarized in Table 1 below.

Table 1: Summary of MFR progress on outstanding obligations through September 5, 2008.

| Activity/ Obligation | Findings in relation to unfulfilled New Skeena obligations |
|---|---|
| Harvesting obligations | <ul style="list-style-type: none"> • The review team inspected 15 of 16 sites previously identified as having unfulfilled obligations, to assess how MFR was addressing these obligations. • Portions of two cutblocks that were felled and never yarded were re-examined and, while the timber remained un-yarded, it was not determined to be impeding the regenerating trees. • Pile burning was undertaken and piles were burned on 7 of the 15 cutblocks where this had not previously been completed. Plans were in place to burn the piles on the remaining 8 cutblocks. <p>The actions being undertaken by MFR satisfactorily address concerns regarding unfulfilled harvesting obligations.</p> |
| Road maintenance and deactivation obligations | <ul style="list-style-type: none"> • Since the 2006 audit, a number of roads that were previously in the audit population have been designated as secondary provincial roads (with Nisga’a Lisims Government approval). These roads are no longer part of the audit population. • The review team inspected the remaining sites identified as having unfulfilled road maintenance or deactivation obligations to assess how MFR was addressing these obligations and found that they were being appropriately managed. <p>The actions being undertaken by MFR satisfactorily address the concerns regarding unfulfilled road maintenance and deactivation obligations.</p> |
| Overdue regeneration delay obligations | <ul style="list-style-type: none"> • The review team inspected survey data and a field sample of 12 standard units to assess how MFR was addressing regeneration delay obligations. • Of the 670 hectares with regeneration delay obligations due since 2005, only approximately 24 hectares (1 standard unit) have yet to achieve sufficient restocking. <p>The actions being undertaken by MFR address the concern regarding regeneration delay. However:</p> <ul style="list-style-type: none"> • approximately 17 standard units have yet to have formal regeneration delay declarations submitted; and, • the review team identified seedlings planted outside of the |

| Activity/ Obligation | Findings in relation to unfulfilled New Skeena obligations |
|--------------------------|---|
| | correct seed transfer limits as described below in <i>Planting Activities on Nisga'a Lands</i> . |
| Free Growing obligations | <ul style="list-style-type: none"> • The review team inspected survey data and a field sample of 15 standard units to assess how MFR was addressing free-growing obligations. • Of the 2,150 hectares due to reach free-growing status since 2005, only approximately 35 hectares (four standards units) have yet to reach free-growing status. • The review team also examined available survey data and a field sample of eight standard units to assess how MFR was addressing additional sites logged prior to 1987 (40 standards units), for which subsequent prescriptions had been approved, creating a reforestation obligation. These sites were determined to be either free growing now, require no further treatment to reach free growing or, in the case of 2 of 40 standard units (45 hectares) have well established hardwood stands on the site that make further treatment of limited value. <p>The actions undertaken by MFR have addressed the concern regarding achievement of free-growing status. However:</p> <ul style="list-style-type: none"> • 11 standard units have yet to have formal free growing declarations submitted. |

Remaining Obligations on Nisga'a Lands

As of the end of September 2008, the primary remaining forestry obligations of New Skeena were in relation to reforestation. Approximately 1,246 hectares of plantations have free-growing obligations that come due between 2009 and 2019, for which MFR will be required to maintain programs.

Planting Activities on Nisga'a Lands

Planting activities were carried out on 10 cutblocks (16 standards units) during 2008, involving a total of 155,475 seedlings. The review team calculated that approximately 39 percent of these seedlings were planted significantly outside of the seed transfer limits identified for these seedlots, as per the *Chief Forester's Standards for Seed Use*, in non-compliance with section 69.1 of the Code.

Seed transfer limits identify specific areas for seed use based on seed planning zones, elevation, latitude and longitude so that the trees planted are adapted to the conditions and perform

optimally in terms of health and growth rate. The growth, form, wood quality, and health of managed forests are dependent on tree seedlings being adapted to the range of climates present at their planting location. Trees planted outside their identified seed transfer zones may grow at a slower rate, be more susceptible to insects, disease, and weather events, or even die. Generally, the greater the distance trees are moved beyond their transfer limits, the greater the risk.

In the case of the cutblocks planted in 2008, instances were observed of seedlings planted outside the seed transfer limits for minimum and maximum elevation. In each case, it was determined that better suited seedlots were available for use at the time. Planting outside of the seed use standards increases the risk that these trees will not perform optimally over time.

Conclusions

This follow-up review was conducted to determine whether government has effectively addressed the situation of pervasive non-compliance identified in the Board's May 2007 audit report relating to the outstanding obligations of New Skeena Forest Products on Nisga'a lands.

The findings section of this report describes the main elements of the assessment and the related findings.

Overall, except for the planting of seedlings significantly outside of the chief forester's standards for seed use (as described above in *Planting Activities on Nisga'a Lands*), the Ministry of Forests and Range has taken effective action on the outstanding obligations of New Skeena Forest Products on Nisga'a lands. These actions have addressed the situation of pervasive non-compliance identified in the Board's May 2007 audit report.



Chris Ridley-Thomas, RPBio
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